



# General Assembly

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## Fifty-ninth session

Agenda items 120 and 108

### Administration of justice at the United Nations

#### Programme budget for the biennium 2004-2005

## **Compensation for officials other than Secretariat officials: members of the United Nations Administrative Tribunal**

### **Note by the Secretary-General**

#### **I. Introduction**

1. The General Assembly, in section XI, paragraph 7, of its resolution 55/258 of 14 June 2001, took note of the observations of the Advisory Committee on Administrative and Budgetary Questions that there was "a gap" between the statutes of the United Nations Administrative Tribunal (UNAT) and the Administrative Tribunal of the International Labour Organization (ILOAT) with respect to specific performance of an obligation and compensation limits, and requested the Secretary-General to take necessary measures to "close the gap" as appropriate between the statutes of the two Tribunals.

2. In paragraphs 35 to 43 of his report A/56/800, the Secretary-General discussed the differences between the statutes of UNAT and ILOAT. In paragraph 39 of the report, he noted that "in considering measures to align the statutes of the two Tribunals, the issue of specific performance should not be viewed in isolation. There are important differences between ILOAT and UNAT on a number of other points, notably the selection criteria and procedures of ILOAT judges and UNAT members." Under article III, paragraph 1, of its statute, ILOAT shall consist of three judges and four deputy judges, who shall all be of different nationalities. Although no specific qualifications are included in the statute of ILOAT, its long-standing practice has been to appoint persons who hold or have held high judicial office. In contrast, at the time of the publication of A/56/800, article 3, paragraph 1, of the UNAT statute, as amended by the General Assembly in its resolution 55/159 of 12 December 2000, required that UNAT members "possess the requisite qualifications and experience, including, as appropriate, legal qualifications and experience". Thus, UNAT members have included persons from a wide variety of backgrounds, including judges, lawyers, academics, diplomats and international civil servants.



3. The Advisory Committee on Administrative and Budgetary Questions, in considering the matter, recalled in paragraph 10 of its report A/57/736, that it had already commented on the fact that "the inability of the [United Nations] Administrative Tribunal to order specific performance seriously limits the staff's rights to redress. Although this gap has existed since the inception of the Tribunal, the Committee believes that time has come to consider closing it, especially when a number of other far-reaching reforms in the area of human resources management are being considered". In paragraph 13 of its report, the Advisory Committee further stated, "whether or not the General Assembly endorses the views of the United Nations Administrative Tribunal on specific performance,<sup>1</sup> the Advisory Committee recommends that the Tribunal be strengthened through an amendment to its statute requiring that candidates for the Tribunal possess judicial experience in the field of administrative law or its equivalent in the candidate's national jurisdiction. This change would obviate the need for the third tier, which had been recommended by the Joint Inspection Unit". In paragraphs 14 and 16 of the same report, the Advisory Committee stated, "if the statute of the United Nations Administrative Tribunal is amended in the manner indicated above, the Advisory Committee recommends that the appointment continue to be done directly by the General Assembly in plenary", and, "should the General Assembly accept the Advisory Committee's recommendation ... on judicial qualifications, proposals could be made by the Secretary-General regarding compensation".

4. The General Assembly, in paragraph 14 of its resolution 57/307 of 15 April 2003, agreed that the UNAT "should be strengthened through an amendment to its statute requiring that the candidates for the Tribunal possess judicial experience in the field of administrative law or its equivalent within the candidate's national jurisdiction, as recommended in paragraph 13 of the report of the Advisory Committee", and decided to take a decision on this matter at its fifty-eighth session.

5. Accordingly, on the recommendation of the Sixth Committee, article 3, paragraph 1, of the UNAT statute was amended by the General Assembly in resolution 58/87 of 9 December 2003 to read as follows (with emphasis added):

"The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess **judicial or other relevant legal experience** in the field of administrative law or its equivalent within the member's national jurisdiction. Only three members shall sit in any particular case."

6. While the amendment to the statute adopted by the General Assembly increased the requirements to be met by candidates for the Tribunal,<sup>2</sup> it does not require judicial experience in all cases, and maintains a significant difference between the qualifications and experience required of UNAT members vis-à-vis ILOAT judges.

7. As indicated in paragraph 3 above, the Advisory Committee on Administrative and Budgetary Questions had suggested, in paragraph 16 of its report A/57/736, that

<sup>1</sup> See A/C.5/57/25, annex II.

<sup>2</sup> In its prior version, article 3, paragraph 1 of the UNAT statute read: "The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess the requisite qualifications and experience, including, as appropriate, legal qualifications and experience. Only three members shall sit in any particular case."

should the General Assembly accept its recommendation on judicial qualifications for the members of UNAT, proposals could be made by the Secretary-General regarding compensation. In this connection, the annex to the present report contains a letter from the UNAT President in which he has requested the Secretary-General to take whatever steps are deemed appropriate in order to provide remuneration to the members of UNAT equivalent to that received by the judges of ILOAT.

8. The present note is submitted for the consideration of the General Assembly should it be decided that UNAT members should receive remuneration comparable to that received by ILOAT judges.

## II. Review

9. With effect from 1 January 1981, UNAT members received honorariums in accordance with the provisions of General Assembly resolution 35/218 of 17 December 1980, as follows: President, \$5,000 per annum; other members, \$3,000 per annum. The honorarium was reduced to \$1 per year in accordance with paragraph 1 of General Assembly resolution 56/272 of 27 March 2002, by which the Assembly decided, "with effect from 6 April 2002, to set at a level of one United States dollar per year all honorariums currently payable on an exceptional basis to the members of the International Law Commission, the International Narcotics Control Board, the United Nations Administrative Tribunal, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child". In addition to their honorariums, UNAT members are paid travel expenses and receive daily subsistence allowance at the standard rate plus 40 per cent. UNAT holds two sessions per year (New York and Geneva), each of approximately five weeks' duration. All the members are present during the entire duration of each session.

10. The judges of ILOAT receive subsistence allowance during their stay in Geneva at the standard rate plus 15 per cent and an honorarium based on the number of cases dealt with annually. In each case, usually only three of the seven judges sit. ILOAT holds two sessions per year, each of three weeks' duration. The sessions are arranged as follows:

- (a) First week: three English-speaking judges and the President;
- (b) Second week: all the judges and the President;
- (c) Third week: three French-speaking judges and the President.

One of the three judges is the judge rapporteur, who drafts the judgement; the other two judges participate in the discussion and also sign the judgement. For each judgement, the judge rapporteur receives an honorarium of 1,500 Swiss francs and each of the other two judges an honorarium of 375 Swiss francs.

11. As the General Assembly has decided to strengthen UNAT by amending its statute to require that the candidates for UNAT "possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction", the Assembly may wish to raise the honorarium paid to the members of UNAT to a level comparable to that received by the judges of ILOAT. At the same time, the Assembly may wish to request the members of

UNAT to review the possibility of harmonizing the working methods of the two Tribunals by reference to the ILOAT approach explained in paragraph 10 above.

12. In considering proposals regarding possible compensation for the members of UNAT, due consideration has been given to: (a) the composition of UNAT and (b) advice received from the secretariat of UNAT regarding the workload. The secretariat of UNAT has reported that UNAT renders, on average, 60 judgements per annum. The average number of cases disposed of is higher, as some cases are joined by the Tribunal. The UNAT secretariat indicated that for 2003, UNAT disposed of 66 cases and rendered 63 judgements.

13. Should the General Assembly decide to adjust the honorarium of the members of UNAT, assuming that 70 judgements are rendered per annum, each of the seven members would draft 10 judgements a year and would sit as a panel member for 20 other judgements, which they would sign. Accordingly, the financial implications have been calculated on the premise that each member of UNAT would be assigned to a total of 30 cases per year.

### III. Financial implications

14. Should the General Assembly decide that UNAT members are to be compensated in a manner comparable to ILOAT judges, the General Assembly may wish to consider honorariums as follows: the UNAT member drafting a judgement would receive \$1,000; the two members signing the judgement would receive \$250 for each case.

15. On the assumption that implementation would take effect as from 1 January 2005, additional requirements would arise under section 8, Legal affairs, of the programme budget for the biennium 2004-2005, as reflected in the table. The biennial cost would amount to an increase of \$210,000.

Table

#### Programme budget implications of the proposal on honorariums for members of the United Nations Administrative Tribunal

(United States dollars)

|                                                                                                                                  | <i>Provisions included in section 8 of the programme budget for the biennium 2004-2005</i> | <i>Additional requirements for one year that would arise under paragraph 14 of the present note</i> | <i>Revised requirements under section 8 of the programme budget for the biennium 2004-2005</i> |
|----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| <b>Compensation for one year (based on the assumption that UNAT members would draft 10 judgements and sit for 20 judgements)</b> | <b>100</b>                                                                                 | <b>105 000</b>                                                                                      | <b>105 100</b>                                                                                 |

**Annex****Letter dated 18 November 2003 from the President of the United Nations Administrative Tribunal addressed to the Secretary-General**

The General Assembly agreed, in operative paragraph 14 of its resolution 57/307 of 15 April 2003, that the United Nations Administrative Tribunal should be strengthened through an amendment to its statute requiring that the candidates for the Tribunal possess judicial experience in the field of administrative law or its equivalent within their national jurisdiction, as recommended in paragraph 13 of the report of the Advisory Committee on Administrative and Budgetary Questions (A/57/736), and decided to take a decision on this matter at its fifty-eighth session.

On 20 October 2003, the Sixth Committee decided to amend article 3, paragraph 1, of the Statute of the United Nations Administrative Tribunal with effect from 1 January 2004, to read as follows:

"The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction. Only three members shall sit in any particular case."

The Advisory Committee suggested in paragraph 16 of its report that, should the General Assembly accept its recommendation in paragraph 13, proposals could be made by the Secretary-General regarding compensation.

In this regard, the Advisory Committee noted that it had been informed, upon enquiry, that the judges of the Administrative Tribunal of the International Labour Organization (ILO) receive the "usual" subsistence allowances and a fee based on the number of cases dealt with annually. The judges get 1,500 Swiss francs for each case they draft and 375 Swiss francs for each case for which they sit as a panel member and sign. The members of the United Nations Administrative Tribunal, on the other hand, receive, in addition to travel and daily subsistence allowance expenses, an honorarium of only \$1 per year.

In view of the foregoing, I would be most grateful if you would undertake whatever steps you deem appropriate in order to provide remuneration to the members of the United Nations Administrative Tribunal equivalent to that received by the judges of the ILO Administrative Tribunal. This would also be in line with the proposals to "close the gap" between the two Tribunals.

Julio Barboza  
President  
United Nations Administrative Tribunal